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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,186	02/17/2004	Jesse M. Hammonds	223/1	1743

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EXAMINER

MOHANDESI, JILA M

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 02/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/780,186

Applicant(s)

HAMMONDS, JESSE M.

Examiner

Jila M. Mohandesi

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>05-19-2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Gianola (3,027,659). Gianola '659 discloses a self-ventilating shoe assembly, comprising: an upper (14); an outsole (16) attached to said upper; an insole (see column 2, lines 69-70) located between said upper and said outsole; a resilient ventilation body (sponge rubber blocks 24 and 26) located between said outsole and said insole, and comprising an intake (tubes 30 and 32 with one-way check valves 34 and 36) communication with an exterior of said shoe assembly and an exhaust (conductors 38 and 42 with check valves 40 and 44) communicating with an interior of said shoe assembly, such that: upon application of pressure against said resilient body, air is discharged outwardly through said exhaust to the interior of said shoe assembly, thereby ventilating said shoe assembly; and upon release of pressure from said resilient body, air is drawn inwardly from outside of said shoe assembly through said intake as said body expands to its original form. See figures 1-10 embodiments.
3. Claims 1, 3-4 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Goss (5,826,349). Goss '349 discloses a self-ventilating shoe assembly, comprising: an upper (12); an outsole (16) attached to said upper; an insole (insert 50) located between

said upper and said outsole; a resilient ventilation body (resilient encasement 20) located between said outsole and said insole, and comprising an intake (air intake tube 40 with air intake 30) communication with an exterior of said shoe assembly and an exhaust (conduits with check valves 22 as shown in figures 3 and 4 embodiments) communicating with an interior of said shoe assembly, such that: upon application of pressure against said resilient body, air is discharged outwardly through said exhaust to the interior of said shoe assembly, thereby ventilating said shoe assembly; and upon release of pressure from said resilient body, air is drawn inwardly from outside of said shoe assembly through said intake as said body expands to its original form. See figures 1-8 embodiments.

With respect to claim 8, note toe vents (18) in figure 3 embodiment.

4. Claims 1-5, 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Shin et al. (5,975,861). Shin '861 discloses a self-ventilating shoe assembly, comprising: an upper; an outsole attached to said upper (see figure 2 embodiment); an insole (50) located between said upper and said outsole; a resilient ventilation body (bellows and compression spring 20) located between said outsole and said insole, and comprising an intake (air intake tube 19 with one way check valve 17) communication with an exterior of said shoe assembly and an exhaust (exhaust pipe 18 with check valves 16) communicating with an interior of said shoe assembly, such that: upon application of pressure against said resilient body, air is discharged outwardly through said exhaust to the interior of said shoe assembly, thereby ventilating said shoe assembly; and upon release of pressure from said resilient body, air is drawn inwardly

from outside of said shoe assembly through said intake as said body expands to its original form. See figures 1-3 embodiments.

With respect to claim 8, note toe vents (51) in figure 1 embodiment.

5. Claims 1-4, 8-12, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Cho (6,085,444). Cho '444 discloses a self-ventilating shoe assembly, comprising: an upper; an outsole attached to said upper (see column 1, lines 16-20); an insole (see figure 4 embodiment, not numbered) located between said upper and said outsole; first and second resilient ventilation bodies (air pressing rooms 3, 4 and 5) located between said outsole and said insole, and in respective heel and ball regions of said shoe assembly, each ventilation body comprising an intake (suction pipes 6 and 6' with check valves 8, 8') communicating with an exterior of said shoe assembly and an exhaust (connection pipes 9 and 9' and exhaust pipe 10 with extension pipes 12) communicating with an interior of said shoe assembly, such that: upon application of pressure against said resilient body, air is discharged outwardly through said exhaust to the interior of said shoe assembly, thereby ventilating said shoe assembly; and upon release of pressure from said resilient body, air is drawn inwardly from outside of said shoe assembly through said intake as said body expands to its original form. See figures 1-8 embodiments.

With respect to claims 8 and 16, note toe vents (breathing holes 11) in figure 1 embodiment.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable Cho '444.

Claims 17-20 are directed to the obvious method of using the Cho' 444 shoe assembly.

10. Claims 5, 7, 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable Cho '444 in view of Shin '861. Cho '444 as described above discloses all the limitations of the claims except for the ventilation bodies including a plurality of bellows with a compression spring. Shin '861 discloses that it is desirable to make the

Art Unit: 3728

ventilation body with bellows and a compression spring for better compressibility.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the ventilating body of Cho '444 with bellows and a compression springs as taught by Shin '444 for better compressibility.

11. Claims 6 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable Cho '444 in view of Liu et al. (U.S. Pub. No. 2004/0010939). Cho '444 as described above discloses all the limitations of the claims except for the ventilation bodies comprising visco-elastic foam. Liu discloses that it is desirable to make the ventilation body from elastic foam for better compressibility. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the ventilating body of Cho '444 from elastic foam as taught by Liu for better compressibility.

With respect to the foam being visco-elastic foam, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are self-ventilating shoe assemblies analogous to applicant's instant invention.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jila M. Mohandesi whose telephone number is (571) 272-4558. The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

Art Unit: 3728

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jila M Mohandesi
Primary Examiner
Art Unit 3728

JMM
January 30, 2006